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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,508	04/01/2004	T. E. Chormenky	TEC 04041	8635
7590 03/21/2006			EXAMINER	
JAMES RAY & ASSOCIATES 2640 PITCAIRN ROAD MONROEVILLE, PA 15146			LA, ANH V	
			ART UNIT	PAPER NUMBER
			2612	

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/816,508

Applicant(s)

T. E. CHORNENKY

Examiner

Anh V. La

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-15 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 16-21 is/are rejected.
- 7) ☒ Claim(s) 3-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Horton (US 5,091,926).

Regarding claim 1, Horton discloses a transmitting apparatus comprising a sensor 10 for detecting an ear movement (abstract, column 1, lines 10-25, col. 5, lines 10-50), and an electronic module 28, 29, 30, coupled to the ear movement sensor for starting a procedure upon a detection of the ear movement (abstract, col. 1, lines 10-25, col. 5, lines 10-50). It is clearly seen that movement of the ear is caused by movement of the head of the user.

Regarding claim 2, Horton discloses signaling means comprising a light source wherein the electronic module is coupled to the signaling means and enables the signaling means upon detection of the ear movement (abstract, col. 1, lines 10-25, col. 5, lines 10-50).

Regarding claim 21, Horton discloses a method of transmitting commands comprising sensing when an ear of the user is pulled back and turning on a laser mounted on the user when the sensing occurs (abstract, column 1, lines 10-25, col. 5, lines 10-50).

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3. Claims 16, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Mooneyham (US 5,677,834).

Regarding claim 16, Mooneyham discloses a communication apparatus comprising a portable computer 30 worn by a user, a microphone 45 and a speaker 42 worn by the user, an electronic module 50 coupled to the microphone, the speaker and the portable computer for receiving a voice message from the microphone and sending the voice message to the portable computing device, wherein the portable computing device, in response to the voice message, sends an answering audio communication to the electronic module which, in turn transfers the audio communication to the speaker (figures 2-3).

Regarding claim 19, Mooneyham discloses a bar code reader 53.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mooneyham in view of Shurman (US 6,091,832).

Regarding claim 17, Mooneyham discloses all the claimed subject matter as set forth above in the rejection of claim 16, but still does not disclose the speaker being worn proximate to one ear of the user and the microphone being worn to the other ear of the user. Shurman teaches the use of a speaker 202, 203, being worn proximate to

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one ear of a user and a microphone 206, 207, being worn to the other ear of the user (fig. 10). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include the speaker being worn proximate to one ear of the user and the microphone being worn to the other ear of the user to the apparatus of Mooneyham as taught by Shurman for the purpose of effectively receiving and transmitting voice messages.

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mooneyham in view of Nixon (US 6,806,847).

Regarding claim 18, Mooneyham discloses all the claimed subject matter as set forth above in the rejection of claim 16, but still does not disclose an RF connection to one of a free standing computer and the internet. Nixon teaches the use of a portable computer being coupled by an RF connection to one of a free standing computer and the internet (figure 1, abstract). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include an RF connection to one of a free standing computer and the internet to the apparatus of Mooneyham as taught by Nixon for the purpose of transferring data received from the electronic module to the standing computer and the internet for additional process and receiving back from the standing computer and the internet information which is passed to the electronic module.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mooneyham in view of Yamaguchi (US 6,345,111).

Regarding claim 20, Mooneyham discloses all the claimed subject matter as set forth above in the rejection of claim 16, but still does not disclose an ear movement sensor. Yamaguchi teaches the use of a plurality of different sensors including a voice recognition sensor 102a, and an ear movement sensor 101 (col. 6, lines 40-60). It is clearly seen that the movement of the head causes the movement of the ear. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to include an ear movement sensor to the apparatus of Mooneyham as taught by Yamaguchi for the purpose of effectively monitoring the user's movement to activate a procedure.

8. Claims 3-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 10-15 are allowed.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pelosi and Sibert teach body movement activation systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anh V. La whose telephone number is (571) 272-2970. The examiner can normally be reached on Mon-Fri from 9:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffery Hofsass can be reached on (571) 272-2981. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**ANH V. LA**  
**PRIMARY EXAMINER**

Anh V La  
Primary Examiner  
Art Unit 2636

AI  
March 17, 2006